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1       **1. Jurisdiction and Service:**

2       Plaintiffs filed this action in Napa County Superior Court. Allstate Insurance Company  
3       removed it to this Court pursuant to 28 U.S.C. sections 1332, 1441(a), and 1446. This Court has  
4       original jurisdiction over the Superior Court Action under 28 U.S.C section 1332, as plaintiff  
5       and Allstate are citizens of different states and the amount in controversy exceeds \$75,000,  
6       exclusive of interest and costs.

7       All parties have been served.

8       **2. Facts:**

9       Allstate insured plaintiff Michelle Fanucci under her father's auto policy, which provided  
10      \$250,000 in underinsured motorist coverage. Ms. Fanucci, a pedestrian, was struck by an  
11      automobile on January 18, 1997. The at-fault driver carried \$100,000 in liability coverage,  
12      which was paid to Ms. Fanucci. She then demanded the balance of her underinsured motorist  
13      coverage from Allstate. Because Ms. Fanucci and Allstate could not agree on the value of her  
14      claim, the dispute was submitted to arbitration, at which Ms. Fanucci was awarded  
15      \$1,418,014.07. Following the arbitration, Allstate paid its \$150,000 net policy limit under Ms.  
16      Fanucci's auto policy. She now demands that Allstate pay an additional \$1 million under her  
17      father's personal umbrella policy with Allstate.

18       Ms. Fanucci alleges Allstate is estopped from denying underinsured motorist coverage  
19      under the umbrella policy because its agent, Michael Baldwin, allegedly advised her father in  
20      1987 that the umbrella policy would supplement each of the underlying auto coverages. Finally,  
21      Ms. Fanucci asserts bad faith delay in payment of the \$150,000, claiming Allstate should not  
22      have required her to go through arbitration to recover the underinsured motorist benefits.

23       On the basis of these allegations, Ms. Fanucci asserts claims for declaratory relief, breach  
24      of contact, breach of the implied covenant of good faith and fair dealing, negligence and  
25      negligent misrepresentation. She seeks special damages totaling \$1,035,257.51, general and  
26      punitive damages, attorneys' fees, prejudgment interest and costs of suit.

1       **3. Legal Issues:**

2       1.     Is Allstate estopped from disputing coverage under its umbrella policy  
3                    based on the conduct of its agent?

4       2.     Can coverage be created by estoppel?

5       3.     Does the statute of limitations bar plaintiff's claim?

6       4.     Was Mr. Baldwin negligent?

7       5.     Did Mr. Baldwin breach a duty of care?

8       **4. Motions:**

9       Allstate may move for summary judgment or partial summary judgment.

10      **5. Amendment of Pleadings:**

11      None anticipated.

12      **6. Evidence Preservation:**

13      The parties have taken appropriate steps to ensure the preservation of evidence.

14      **7. Disclosures:**

15      The parties will serve their initial disclosures on or before July 23, 2008.

16      **8. Discovery:**

17      The parties plan to conduct discovery regarding all allegations in the complaint. The  
18      parties anticipate propounding written discovery and deposing the parties and other relevant  
19      witnesses. The parties do not believe any deviation from the discovery guidelines set forth in  
20      the Federal Rules of Civil Procedure is necessary at this time.

21      **9. Related Cases:**

22      There are no pending related cases.

23      **10. Relief:**24      Plaintiffs' Statement

25      Plaintiff seeks (1) a declaration that Allstate is estopped to deny underinsured motorist  
26      coverage under the automobile policy, (2) special damages \$1,035,257.51, (3) general damages,  
27      (4) attorneys fees, and (5) punitive damages.

1           Defendant's Statement

2           Allstate seeks judgment in its favor and recovery of its costs.

3           **11. Settlement and ADR:**4           The parties have not filed a "Stipulation and Proposed Order" selecting an ADR process  
5           but jointly request assignment to the Early Neutral Evaluation program.6           **12. Consent to Magistrate:**

7           The parties consent to the assignment of this action to Magistrate Judge Edward Chen.

8           **13 Other references:**

9           The parties do not believe any other reference is necessary at this time.

10           **14. Narrowing of Issues:**11           The parties believe it is premature to narrow the issues through stipulation at this time.  
12           However, as discovery progresses, the parties will re-evaluate this issue.13           **15 Scheduling:**

14           The parties propose the following schedule for discovery, motions and trial:

15           Exchange of Initial Disclosure:	July 30, 2008
16           Non-expert discovery cut-off:	December 15, 2008
17           FRCP 26(a)(2) expert disclosures:	December 22, 2008
18           FRCP 26(a)(2) rebuttal disclosures:	January 12, 2009
19           Expert discovery cut-off:	February 6, 2009
20           Dispositive pre-trial motion hearing cut-off:	March 15, 2009
21           Pretrial conference statement:	April 22, 2009
22           Pretrial conference:	April 29, 2009

23           **16. Trial:**

24           The parties request a trial date of May 11, 2009.

25           **17. Disclosure of Non-party Interested Entities or Persons:**26           Allstate is not aware of any interested parties required to be disclosed pursuant to Northern  
27           District Local Rule 3-16.

1 Dated: July 23, 2008

PEARSON, SIMON, SOTER, WARSHAW &  
PENNY, LLP

2  
3 By \_\_\_\_\_ /s/ GARY SOTER \_\_\_\_\_  
4 GARY SOTER

5 Attorneys for Plaintiff  
6 MICHELLE FANUCCI

7  
8 Dated: July 23, 2008

SONNENSCHEIN NATH & ROSENTHAL LLP

9  
10 By \_\_\_\_\_ /s/ SONIA MARTIN \_\_\_\_\_  
11 SONIA MARTIN

12 Attorneys for Defendant  
13 ALLSTATE INSURANCE COMPANY

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SONNENSCHEIN NATH & ROSENTHAL LLP  
2121 N. California Blvd., Suite 800  
Walnut Creek, California 94596  
(925) 949-2600

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**[PROPOSED] CASE MANAGEMENT ORDER**  
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The case Management Statement and Proposed Order is hereby adopted by the Court as  
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the Case Management Order for the case and the parties are ordered to comply with this Order.  
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In addition, the Court orders:  
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Dated: \_\_\_\_\_

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Hon. Edward M. Chen  
United States Magistrate Judge